IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 197 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABULAL HEMTAJI PADHIYAR

Versus

KESHAVLAL KACHRABHAI RAKANI

Appearance:

MR CL SONI for Petitioner

MR NS SHETH for Respondent No. 1, 3, 4

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/01/2001

ORAL JUDGEMENT

The petitioner is the original plaintiff, who has filed Regular Civil Suit No.93 of 1996 in the Court of Civil Judge (J.D.), Deesa. The said suit has been filed on the ground that he is the tenant of the suit house, bearing House No.555, situated in Deesa Town. It is his case, as per the revision memo, that he was illegally dispossessed and that initially, Court Commissioner was appointed at the time of hearing Exhibit 5 for local inspection of the aforesaid house. At that time, according to the plaintiff, as defendant No.4 was also found to be in possession of the suit house, he was

subsequently joined as defendant No.4. In the said suit, on behalf of defendants, an application at Exhibit 47 was given for making Panchnama by stating that the Municipality has committed certain mistakes in giving house numbers and assessment register is not being maintained properly and description of the property is not properly mentioned in the assessment orders of the Municipality. According to the defendant, the plaintiff is residing in Survey No.205 of Rajpur in Deesa Town since last 10 years. Therefore, a Court Commissioner may be appointed to make Panchnama of the house of the property, which is situated in the said field, i.e. Survey No.205 The trial court appointed a Commissioner as prayed for by the defendants. The said order is challenged by the original plaintiff by filing the present Revision Application.

At the time of hearing of this Revision Application, Mr.Soni for the petitioner argued that there is no question of making Panchnama of some other property, which is not the subject matter. According to him, he has filed the suit, asserting his right as a tenant of the suit premises and that it was submitted that he was illegally dispossessed. He further submitted that if he has any house or not is not the relevant issue in the suit itself and, therefore, there was no question of making Panchnama of Survey No.205 as, assuming that he might be staying there, the same has no relevance so far as the issue involved in the present suit is concerned. It is submitted that assuming that the plaintiff was having another premises, as stated in the application, the same has no relevance for deciding the present suit, wherein the issue was whether he was the tenant or not or whether he was illegally dispossessed or not. He submitted that since the property for which Panchnama is to be made is not the subject matter, the Court has no jurisdiction to appoint the Court Commissioner for making Panchnama of the same.

Mr.N.S. Sheth, appearing for the respondents, submitted that since there is no jurisdictional error and since this is a discretionary order of the trial court to appoint a Court Commissioner, this Court, in Revision Application, may not upset the aforesaid order.

The present revision application was admitted as back as in February, 1997 and till today, the impugned order of making Panchnama is stayed by this Court. It is not in dispute that the suit of the plaintiff is regarding his declaration as a tenant of the premises in question and, therefore, so far as Survey No.205 is

concerned, the same is not the subject matter and, therefore, naturally, whether the plaintiff has got other house or not is not relevant to decide the present suit, wherein the question which is required to be considered is whether the suit premises which is the subject matter of Regular Civil Suit No.93 of 1996, is possessed by the plaintiff as a tenant or not or whether he was illegally dispossessed. In order to decide that controversy, it is not necessary to have the Panchnama of other premises, which, according to the plaintiff, he might be possessing as an owner. The Panchnama can be made regarding the subject matter of the suit so that the Court can get benefit of Panchnama for deciding the controversy between the parties, which can only help the Court in arriving at a proper conclusion. However, the Panchnama of some other property, which has no bearing with the present suit, cannot be made and, therefore, so far as Survey No.205 is concerned, it has nothing to do with the present suit in any manner. Therefore, that part of the order of the learned trial Judge is clearly without jurisdiction. The learned trial Judge has exceeded the jurisdiction in passing the aforesaid order for preparing Panchnama. In that view of the matter, the impugned order is required to be quashed and set aside and it is accordingly set aside. It is, however, clarified that whether the plaintiff has got right, title or interest in the suit property or not is required to be decided by evidence which might be led by both the sides. If according to the defendants the plaintiff was not the tenant of the suit premises, naturally they will have to lead evidence to that effect and for that purpose, it is not necessary to have Panchnama of some other premises or agricultural field.

The Revision Applicaiton is accordingly allowed.
Rule is made absolute with no order as to costs.

12th January, 2001 (P.B. Majmudar, J.)

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(apj)